

KENNETH F. CUMMINGS

IBLA 81-934

Decided March 10, 1982

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers, U-41388 and U-41389.

Affirmed.

1. Act of September 19, 1914 -- Mineral Leasing Act: Applicability -- Statutes -- Statutory Construction: Implied Repeals -- Withdrawals and Reservations: Effect of

The Act of September 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of February 25, 1920, 30 U.S.C. § 181 (1976).

2. Oil and Gas Leases: Discretion to Lease

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other considerations in the public interest.

3. Oil and Gas Leases: Lands Subject to --

The fact that oil and gas leases may have been wrongly issued in the past for lands which were not available for leasing does not militate in favor of reenacting the

wrong for the sake of consistency or to avoid discriminatory treatment of a subsequent offeror.

APPEARANCES: Frank J. Gustin, Esq., Salt Lake City, Utah, for appellant; Ray L. Montgomery, Esq., Salt Lake City, Utah, for Salt Lake City Corporation.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On September 27, 1978, Kenneth F. Cummings, appellant, filed non-competitive offers U-41388 and U-41389, to lease certain lands with the Utah State Office, Bureau of Land Management (BLM). On July 14, 1981, BLM issued a decision which rejected those offers because the lands applied for under the subject leases are within the Salt Lake City Water Supply and were withdrawn from appropriation under the public land laws, including the mineral laws, by the Act of September 19, 1914. ^{1/} Ch. 302, 38 Stat. 714 [P.L. 63-199], hereinafter "the 1914 Act."

In his statement of reasons, appellant contends that the Department of the Interior has acted in an inconsistent, arbitrary, capricious and discriminatory manner by the issuance of other oil and gas leases within the Salt Lake City Water Supply in the Wasatch National Forest, including lands allegedly reserved under the 1914 Act. He contends that these other leases have been specifically found to be consistent with environmental considerations and not detrimental to the said water supply, and that the issuance of leases U-41388 and U-41389 would be consistent with these other oil and gas leases, and that the subject leases would not unreasonably interfere with the Salt Lake City Water Supply. Appellant further contends that by granting other oil and gas leases in the Salt Lake City Water Supply, the Department of the Interior has recognized that the 1914 Act is no longer applicable, it having been altered, amended, or repealed by other congressional enactments including the Mineral Leasing Act of 1920 and other executive orders and regulations, the general effect of which is to grant discretionary authority to the Departments of the Interior and Agriculture to grant oil and gas leases in National forests.

Salt Lake City Corporation, through the Assistant City Attorney, has appeared as intervenor and filed a statement opposing the applicant's appeal because, despite the appellant's allegation, the City is unaware of any leases of mineral rights on Federal lands within the City's watershed which were granted by the United States. The City maintains that the lands involved, being reserved under the 1914 Act, are not subject to mineral leasing under the Mineral Leasing Act of 1920; that to the City's knowledge, there has been no amendment or modification of the 1914 Act which would allow mineral leasing within the City's watershed; and because exploitation of oil and mineral rights could, and the City believes would, cause damage to the watershed. Salt Lake City Corporation requests that the appeal be denied.

^{1/} Incorrectly cited in the decision as the Act of Sept. 14, 1914.

The 1914 Act, supra, provides, in part, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the public lands within the several townships and subdivisions thereof hereinafter enumerated, situate in the county of Salt Lake, State of Utah, are hereby reserved from all forms of location, entry, or appropriation, whether under the mineral or nonmineral land laws of the United States, and set aside as a municipal water supply reserve for the use and benefit of the city of Salt Lake City, a municipal corporation of the State of Utah, as follows, to wit: [Land description omitted.]

Sec. 2. That the lands heretofore described and reserved for municipal water-supply purposes shall be administered by the Secretary of Agriculture in cooperation with and at the exclusive expense of the city of Salt Lake City, for the purpose of storing, conserving, and protecting from pollution the said water supply, and preserving, improving, and increasing the timber growth on said lands to more fully accomplish such purposes; and to that end said city shall have the right, subject to the approval of the Secretary of Agriculture, to the use of any and all parts of the lands reserved, for the storage and conveying of water and construction and maintenance thereon of all improvements for such purposes.

Sec. 3. That in addition to the authority given the Secretary of Agriculture under the Act of June fourth, eighteen hundred and ninety-seven (Thirtieth Statutes, page thirty-five), he is hereby authorized to prescribe and enforce such regulations as he may find necessary to carry out the purpose of this Act, including the right to forbid persons other than forest officers and those authorized by the municipal authorities from entering or otherwise trespassing upon these lands, and any violation of this Act or of regulations issued thereunder shall be punishable as is provided for in section fifty of the Act entitled * * *. [Citation omitted, emphasis in original.]

Clearly, the foregoing withdraws and reserves the subject land from the operation of both the mineral and nonmineral laws of the United States. It will also be noted that the 1914 Act invests the Secretary of Agriculture with near-autonomous authority to approve and control other uses, and even physical entries, on these lands. In the course of its adjudication of these lease offers, BLM requested and received from the office of the Department's Regional Solicitor, an attorney's opinion of the continuing efficacy of the 1914 Act and the consequent availability of the lands affected. That opinion concluded, in effect, that the 1914 statutory withdrawal precluded leasing the land for oil

and gas, and equated the Act with law which excludes mineral leasing upon Forest reserve lands set aside for water supply purposes, citing 16 U.S.C. § 552a (1976).

During this time BLM also solicited the views of the Forest Service regarding the pending lease offers. By his letter dated April 16, 1981, the Deputy Regional Forester, who exercises the delegated authority of the Secretary of Agriculture, recommended rejection of the lease offers for the reason that the Act prohibited mineral leasing.

Subsequently, BLM rejected the offers and this appeal followed.

[1] We are unable to construe the Mineral Leasing Act of February 25, 1920, as having repealed the 1914 Act by implication, nor has appellant pointed out any language or rationale by which such a conclusion might reasonably be supported. Moreover, repeal of a statute by implication is not favored in law, and there is a presumption against the implied repeal or amendment of any statutory provision. 1 A Sutherland Statutory Construction, §§ 22.30, 23.10 (4th ed. 1972). Rebuttal of that presumption generally requires that there be an irreconcilable conflict between an earlier and a later statute. Peabody Coal Co., 4 IBLA 303 (1972). Appellant also alleges that the 1914 Act has "been altered, amended or repealed by other [unspecified] congressional enactments * * * and other executive orders and regulations * * *." No action by an executive officer of the United States can have such effect on enacted legislation, and if appellant believes that "other congressional enactments" have done so, it is his responsibility to identify them. We find that the 1914 statute is a viable and effective statutory withdrawal of the land from the operation of any of the mineral or nonmineral laws of the United States relating to location, entry or disposition, including the mineral leasing laws.

[2] Even assuming, arguendo, that the 1914 Act had been repealed or amended, the BLM would be under no compulsion to issue the leases.

Under the provisions of the Mineral Leasing Act of 1920, and amendment thereto, 30 U.S.C. § 181 (1976), public lands are available for leasing at the Secretary's discretion. Section 17 of the Act provides that lands subject to disposition under the Act which are known or believed to contain oil or gas deposits "may be leased by the Secretary." 30 U.S.C. § 226(a) (1976) (emphasis added). The Act requires that if a lease is issued, it must go to the first qualified applicant, but "it left the Secretary discretion to refuse to issue any lease at all on a given tract." Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1963); Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-25 (D.C. Cir. 1960); E. L. Lockhart, 12 IBLA 250 (1973). Such discretion may be exercised for conservation, wildlife protection, and other purposes in the public interest. Id. Assuming no reliance on the 1914 Act, BLM exercised the discretion provided by the Mineral Leasing Act of 1920 in refusing to issue the subject leases. Because the watershed is being

maintained for the benefit of the City, its strong opposition to the issuance of these leases is a matter of cogent concern, and BLM's rejection of appellant's offers was not arbitrary, capricious or an abuse of its discretion.

[3] Finally, with respect to appellant's argument that BLM's action is inconsistent and discriminatory because other oil and gas leases have been issued on the protected lands, we will again note that appellant has not indicated their number, identified any of such leases, or given the descriptions of any lands allegedly covered by such leases. ^{2/} Even had he done so, however, it would have availed him naught. As we stated in George Brennan, Jr., 1 IBLA 4 (1970), "Even if appellant was able to demonstrate conclusively that prospecting permits were wrongly issued in the past, this would not militate in favor of re-enacting the wrong in this case."

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Douglas E. Henriques
Administrative Judge

^{2/} Although appellant did not identify any such leases, we note from the BLM status plat that oil and gas leases U-41191 and U-44844 have been issued for land in T. 1 N., R. 2 E., Salt Lake meridian. The Act supra, withdrew this entire township.

